

RAYMUNDO MONTALVO,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

3:09-cv-00604-LRH-VPC
ORDER

Petitioner then filed a Notice of Appeal (docket #9) on February 25, 2010, appealing from the judgment. There are two matters that must be resolved, however, before petitioner may pursue the appeal.

The second matter that must be resolved before the appeal may proceed is the matter of a certificate of appealability. Petitioner must obtain a certificate of appealability from this Court or

1 from the Court of Appeals, in order to proceed with his appeal. *See* 28 U.S.C. §2253(c). The
 2 standard for the issuance of a certificate of appealability calls for a “substantial showing of the
 3 denial of a constitutional right.” 28 U.S.C. §2253(c). The Supreme Court has interpreted
 4 28 U.S.C. §2253(c) as follows:

5 Where a district court has rejected the constitutional claims
 6 on the merits, the showing required to satisfy §2253(c) is
 7 straightforward: The petitioner must demonstrate that reasonable
 8 jurists would find the district court’s assessment of the constitutional
 9 claims debatable or wrong. The issue becomes somewhat more
 10 complicated where, as here, the district court dismisses the petition
 11 based on procedural grounds. We hold as follows: When the district
 12 court denies a habeas petition on procedural grounds without
 13 reaching the prisoner’s underlying constitutional claim, a COA
 14 should issue when the prisoner shows, at least, that jurists of reason
 15 would find it debatable whether the petition states a valid claim of
 16 the denial of a constitutional right and that jurists of reason would
 17 find it debatable whether the district court was correct in its
 18 procedural ruling.

13 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also James v. Giles*, 221 F.3d 1074, 1077-79
 14 (9th Cir. 2000).

15 Petitioner will be granted time to file, in this Court, a Motion for Certificate of
 16 Appealability. In such motion, petitioner must set forth, in plain and simple terms, what issue(s)
 17 he wishes the Court of Appeals to consider. Petitioner’s statement of issues should look something
 18 like the following:

- 19 (1) Did the district court commit error in dismissing this action
 20 for petitioner’s failure to exhaust state remedies?
- 21 (2) Did the district court commit error in finding that petitioner
 22 did not “fairly present” his claims to the Nevada Supreme
 Court?

23 These are, of course, only examples as to form -- not as to content. Petitioner should carefully
 24 consider the issues in his case, and he should identify the issues that he believes are substantial
 25 enough to present to the Ninth Circuit Court of Appeals. He should clearly identify those issues in
 26 a Motion for Certificate of Appealability.

1 **IT IS THEREFORE ORDERED** that petitioner is **GRANTED** leave to proceed *in forma*
2 *pauperis* on appeal.

3 **IT IS FURTHER ORDERED** that petitioner shall have **thirty (30) days** from the date of
4 entry of this Order to file a Motion for Certificate of Appealability that complies with the Court's
5 instructions, above.

6 **IT IS FURTHER ORDERED** that if petitioner fails to comply with this Order, this Court
7 may deny him a certificate of appealability.

8 Dated this 2nd day of March, 2010.



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12 LARRY R. HICKS
13 UNITED STATES DISTRICT JUDGE
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